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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

HABEAS CORPUS RESOURCE CENTER,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
JUSTICE and ERIC H. HOLDER, JR.,** in his
official capacity as Attorney General of the
United States,

Defendants.

Case No. C 08-02649 CW

Stipulation for Dismissal

No hearing requested

WHEREAS the plaintiffs, in their amended complaint, sought access to public records and review of a final rule published in December 2008 by the Attorney General of the United States with respect to the certification process for state capital counsel systems, 73 Fed. Reg. 75,327 (Dec. 11, 2008) (“the 2008 final rule”);

WHEREAS, this Court denied defendants’ motion for summary judgment on the adequacy of searches and issued orders directing the defendants to conduct additional searches in response to the plaintiff’s FOIA request, and also issued orders sustaining

1 some of the defendants' claims of exemptions from disclosure but directing that other
2 records be disclosed in whole or in part;

3 WHEREAS, this Court issued a preliminary injunction that enjoined the
4 defendants from putting the 2008 final rule into effect "without first providing an
5 additional comment period of at least thirty days and publishing a response to any
6 comments received during such period";

7 WHEREAS, the defendants complied with the Court's directions with respect to
8 the plaintiff's FOIA request, their additional searches resulted in the disclosure of public
9 records responsive to plaintiff's request, and the Attorney General has published a request
10 for additional public comments with respect to the 2008 final rule, 74 Fed. Reg. 6131
11 (Feb. 5, 2009);

12 WHEREAS, the Attorney General has published a notice of proposed rulemaking,
13 which proposed to withdraw the 2008 final rule, 75 Fed. Reg. 29,217 (May 25, 2010);

14 WHEREAS, the Attorney General has published a final rule, which withdraws the
15 2008 final rule effective as of December 23, 2010, 75 Fed. Reg. 71,353 (Nov. 23, 2010)
16 ("the 2010 final rule");

17 IT IS HEREBY STIPULATED AND AGREED between the parties to this action
18 that:

19 1. Defendants' searches for and disclosures of public records, and the publication
20 of the 2010 final rule resolves or renders moot the issues that the plaintiff raised in its
21 amended complaint with respect to requests for public records and the 2008 final rule.

22 2. As of the date that the 2010 final rule becomes effective – December 23, 2010 –
23 the preliminary injunction that this Court has entered with respect to the 2008 final rule
24 should be vacated.

25 3. As of December 23, 2010, this case should be dismissed with prejudice as to all
26 claims raised by the plaintiff against the defendants.
27
28

1 4. Pursuant to Civil Local Rule 54-6, the parties will meet and confer with respect
2 to any potential claim for attorney's fees by the plaintiff, and if informal discussions do
3 not resolve the matter, the plaintiff should be directed to file any motion for attorney's
4 fees within fourteen days of the dismissal of this action, or within fourteen days of
5 December 23, 2010, whichever date is later.

6 Respectfully submitted,

7
8 /s/
9 MICHAEL LAURENCE
Attorney for Plaintiff

10 Dated: November 30, 2010

/s/
JOEL McELVAIN
Attorney for Defendants

 Dated: November 30, 2010

11
12 I hereby attest that I have obtained the consent for the filing of this document from
13 all persons whose signatures are represented herein.

14
15 /s/
JOEL McELVAIN

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2010, I electronically filed the foregoing Stipulation for Dismissal, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

/s/ Joel McElvain
JOEL McELVAIN

